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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 271

J. T. SMITH, *Petitioner*,

v.

THE FOURTH NATIONAL BANK OF TULSA, OKLAHOMA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA, AND BRIEF IN SUPPORT THEREOF.

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THE FOURTH NATIONAL BANK OF TULSA, OKLAHOMA,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

INTRODUCTORY STATEMENT.

Petitioner, J. T. Smith, respectfully prays certiorari to review a decision of the Supreme Court of Oklahoma affirming a judgment *in personam* by the District Court of Creek County, Oklahoma, which he asserts was entered over his objection without jurisdiction of the subject matter under the settled decisions of the Supreme Court of Oklahoma, none of which have been modified or overruled. That under

the settled law of Oklahoma, the court acquires no jurisdiction by supplemental petition of a state of facts which in themselves constitute a new, separate and independent cause of action, but, on the contrary, said new and independent cause of action must be filed and prosecuted as a new and independent cause of action. The opinion of the Supreme Court of the State, in failing and refusing to follow and apply the settled law which has stood and still stands as applicable to all other litigants similarly situated under identical facts, has thereby denied to petitioner the equal protection of the law guaranteed to him under the Fourteenth Amendment to the Constitution of the United States.

OPINION BELOW.

The opinion of the Supreme Court of Oklahoma is not officially reported in the Oklahoma Reports, but is reported 112 Pac. (2d) 158, and appears herein (R. 127).

SUMMARY STATEMENT OF MATTERS INVOLVED.

The facts are not controverted: Respondent, on August 18, 1933, commenced in the District Court of Creek County an action against petitioner to recover a personal judgment on a promissory note and, as an incident thereto, foreclosure of mortgage (R. 7). During pendency of said action in Creek County, respondent on November 9, 1933, commenced an action in the District Court of Chautauqua County, Kansas on the same identical note and, as an incident thereto, foreclosure of mortgage and, on May 8, 1934, recovered in the Kansas action a personal judgment against petitioner.

Under settled law of Oklahoma, upon personal judgment being rendered on said note against petitioner, the cause of action on the note was wholly extinguished.

Petitioner, after the cause of action on the note had been merged in the Kansas Judgment, filed in the District Court of Creek County his answer and, among other defenses, pleaded the Kansas judgment as a bar to the suit on the

note (R. 28). Respondent, realizing the cause of action on the note had been merged in the Kansas judgment and a new, separate and independent cause of action created, on December 12, 1934, without notice or an opportunity to be heard, obtained an order of the trial court to, and did file in said cause in Creek County a pleading denominated an "Amended Petition" which was complete within itself, without reference to any other pleading, and sought a personal judgment against petitioner based upon an authenticated copy of the Kansas judgment and, as an incident thereto, to foreclose mortgage (R. 32). This pleading being complete within itself, under the settled law of Oklahoma superseded the original petition and the same no longer constituted a part of the record. Respondent's amended petition, on motion of petitioner, was stricken by order of the District Court of Creek County on February 5, 1935 (R. 75). No appeal was taken from said order striking the amended petition and, under settled law, the amended petition being complete within itself and stating a cause of action upon a foreign judgment, the order striking said pleading left nothing before the court and constituted a final order, and the district court after the term was without jurisdiction to vacate or modify the same.

After two terms of court had expired and after limitations as to the foreign judgment, the mortgages being extinguished under Section 10957 O. S. 1931 by lapse of time, respondent (R. 76) on November 6, 1935, filed a motion to vacate said order striking the amended petition and to permit the pleading to be denominated a supplemental petition, which, over objection of petitioner, was sustained (R. 77). Petitioner, therefore, over his objection, was compelled, in an action on a note which action no longer existed as the note had been merged in judgment, to answer the new, separate and independent cause of action based upon a foreign judgment, presented by a pleading denominated a "supplemental petition". Petitioner answered (R. 85) contending the action set up in said pleading which sought a personal judgment against petitioner on the Kansas judg-

ment was a new and independent cause of action and must be prosecuted as such, and that the court in the original proceeding upon the note acquired no jurisdiction over the subject matter of an action on a foreign judgment, and was without jurisdiction to render judgment in said proceeding on the new and independent cause of action. The petitioner also pleaded limitations and that the mortgage was extinguished. The District Court denied said plea (R. 113) and rendered a personal judgment against said petitioner based upon the Kansas judgment. All proper exceptions were duly saved. On appeal to the Supreme Court of the State, the opinion of said Supreme Court evaded the question presented and affirmed the personal judgment against petitioner.

JURISDICTION.

This is a petition for a writ of certiorari to review an opinion of the Supreme Court of Oklahoma, under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. #344 (b)) and under Paragraph 5(a) of Rule 38.

The opinion (R. 127) of the Supreme Court of the State of Oklahoma was rendered September 17, 1940. The petition for rehearing was denied (R. 138) February 18, 1941 and a stay duly granted to July 15, 1941 (R. 140). An extension of time was duly granted, (R. 140) by this Honorable Court to July 15, 1941.

QUESTIONS PRESENTED.

Whether, under the facts in this case, the Supreme Court of Oklahoma has denied petitioner the equal protection of the settled laws of Oklahoma, as applied to other litigants, in that he has been denied the benefits of the settled laws of Oklahoma which conclusively adjudicate:

(a)—The judgment *in personam* rendered on the promissory note in the District Court of Chautauqua County, Kansas, wholly extinguished the original cause of action

on the same note in the District Court of Creek County, Oklahoma.

(b)—The pleading designated an "Amended Petition" (R. 32) whether termed as an amended petition or a supplemental petition, being complete within itself without reference to the original petition and seeking a personal judgment based upon the Kansas judgment, wholly superseded the original petition in the Oklahoma action and the original petition thereafter constituted no part of the record in said cause.

(c)—That the cause of action set forth in the pleading designated an amended or supplemental petition seeking a personal judgment on the foreign judgment rendered in Kansas being complete within itself, judgment could only be rendered thereon based upon an authenticated copy of the foreign judgment as prescribed by the Act of Congress, Revised Statutes, Section 905 (28 U. S. C. A. Section 687).

(d)—The cause of action set forth in the amended pleading was neither an amendment to the petition nor a supplement to it in aid of the original petition, but constituted a new, separate and independent cause of action.

(e)—The District Court of Creek County acquired no jurisdiction in the suit on a promissory note by either an amended or supplemental pleading over the objection of petitioner to render a personal judgment on an action based and founded solely upon a foreign judgment.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

Petitioner states that in denying to him the equal protection of the law, the Supreme Court of the State of Oklahoma has thereby decided a Federal Question of substance herein heretofore determined by this court in principle, and has decided said question in a way not in accord with

the applicable decisions of this court construing the same principle of law.

Petitioner further states that the opinion of the Supreme Court of Oklahoma is clearly erroneous and in conflict with the settled law as announced in its former decisions which are not overruled or modified. The question of the state court, in construing the laws of the state to mean one thing for some litigants and another thing for other litigants is of great importance, not only to the petitioner, but to every other person in the United States, and likewise it brings a question of substantive law that the precise question herein urged be passed upon by this Honorable Court.

In the interest of brevity, Rule 38 Par. 2; *Furness, Withy & Co. Ltd.* v. *Yank-Tsze Ins. Asso. Ltd.*, 242 U. S. 430, petitioner does not at this time set forth all the points which will be urged at the argument on the merits of this cause, should the writ be allowed, nor all of his contentions in support of such points, but in order to comply with the rules of this court requiring that all issues upon which decisions are requested be presented in the petition for certiorari (*Gunning* v. *Cooley*, 281 U. S. 90-98), petitioner here refers to and incorporates in this petition all the matters presented in his assignments of error on the appeal to the Supreme Court of Oklahoma (R. 2-6) and petition for rehearing (R. 132) with the same force and effect as if herein set forth.

Wherefore, Petitioner respectfully prays that a writ of certiorari issue to the Supreme Court of the State of Oklahoma.

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